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UNITED STATES DISTRICT COURT					
NORTHERN DISTRICT OF CALIFORNIA					
GOVERNOR ENDINGED AND	ı				
COYNESS L. ENNIX JR., M.D.,	Case No. C	07-2486 WHA			
Plaintiff,	PLAINTIFF'S MOTION IN LIMINE NO. 1 TO EXCLUDE UNRELATED PEER REVIEW EVIDENCE; DECLARATION OF RACHEL SATER				
VS.					
ALTA BATES SUMMIT MEDICAL CENTER.					
,	Trial Date	June 2 2008			
Detendants.	Dept:	Ctrm. 9, 19 <sup>th</sup> Floor			
	Juage:	Hon. William H. Alsup			
Plaintiff Covness L. Ennix Ir ("Dr. Enn	j uix") moves to e	exclude evidence and aroument			
relating to Dr. Ennix's professional activities unrelated to the peer review of the ten cases at					
ongoing peer review of Dr. Ennix at ABSMC; (b) any documents or testimony regarding Dr.					
The sole issue in this case is whether race was a factor in ABSMC's peer review actions					
	emblidge@meqlaw.com RACHEL J. SATER, State Bar No. 147976 sater@meqlaw.com ANDREW E. SWEET, State Bar No. 160870 sweet@meqlaw.com MOSCONE, EMBLIDGE, & QUADRA, LLP 220 Montgomery Street, Suite 2100 San Francisco, California 94104-4238 Telephone: (415) 362-3599 Facsimile: (415) 362-2006 Attorneys for Plaintiff  UNITED STATES NORTHERN DISTRI  COYNESS L. ENNIX JR., M.D.,  Plaintiff,  vs.  ALTA BATES SUMMIT MEDICAL CENTER,  Defendants.  Plaintiff Coyness L. Ennix, Jr. ("Dr. Ennited to Dr. Ennix's professional activities unitsue in this lawsuit. Such evidence would incluongoing peer review of Dr. Ennix at ABSMC; (Ennix from hospitals other than ABSMC.)	emblidge@meqlaw.com RACHEL J. SATER, State Bar No. 147976 sater@meqlaw.com ANDREW E. SWEET, State Bar No. 160870 sweet@meqlaw.com MOSCONE, EMBLIDGE, & QUADRA, LLP 220 Montgomery Street, Suite 2100 San Francisco, California 94104-4238 Telephone: (415) 362-3599 Facsimile: (415) 362-2006 Attorneys for Plaintiff  UNITED STATES DISTRICT OF CALIF  NORTHERN DISTRICT OF CALIF  COYNESS L. ENNIX JR., M.D., Plaintiff, vs.  ALTA BATES SUMMIT MEDICAL CENTER, Defendants.  Plaintiff Coyness L. Ennix, Jr. ("Dr. Ennix") moves to expect the property of t			

against Dr. Ennix that nearly ruined his career as a cardiac surgeon. That peer review addressed

ten cases and concluded by July 2006. In the peer review process at issue herein, ABSMC could not have considered cases or peer review of Dr. Ennix's occurring after that time or at a different hospital. Therefore, such evidence has no probative value regarding ABSMC's motivation or the veracity of its proffered justification of protecting "patient safety." Further, ABSMC's post-July 2006 peer review activities are inherently uncredible: they could suffer from (a) the same racial bias that Dr. Ennix believes tainted the peer review at issue; and (b) the additional impermissible motivation of retribution for filing this suit. If such evidence has any probative value, such minimal value is outweighed by the potential prejudice, confusion, and waste of time.

Therefore, the Court should exclude this extra-record evidence as irrelevant and uncredible.

## STATEMENT OF FACTS

Dr. Ennix claims that ABSMC discriminated against him based on his race in violation of 42 U.S.C. § 1981 in a peer review that began in early 2005 and concluded in July 2006. In its initial disclosures, ABSMC stated that it would offer as proof "documents relating to the ongoing peer review of Plaintiff by the Summit Medical Staff from July 11, 2006 to the present." (See Sater Decl., ¶ 2, Exhibit A, at 14:13-14.) Additionally, during discovery, ABSMC subpoenaed documents regarding Dr. Ennix from Doctor's Hospital San Pablo, Valley Care Health Systems in Pleasanton, Highland Hospital in Oakland and San Ramon Medical Center—all hospitals where Dr. Ennix currently enjoys staff privileges. (See Sater Decl., ¶ 3, Exhibit B.) At the time of the challenged peer review, Dr. Ennix had staff privileges only at Alta Bates, Summit and Doctor's Hospital San Pablo. (Sater Decl., ¶ 4.) None of these documents was or could have been considered by ABSMC in the course of the challenged peer review process.

## **ARGUMENT**

This Court should exclude all evidence and testimony regarding cases or peer reviews other than the ten cases reviewed in peer review at issue in this lawsuit. Evidence is admissible if it is probative as to a "fact of consequence" and its probative value is not "outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations

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of undue delay, waste of time, or needless presentation of cumulative evidence." FRE Rules 401, 403. Manifestly, cases and peer review activities that occurred at ABSMC *after* the close of the peer review at issue have no probative value regarding whether ABSMC's actions regarding the current peer review were justified by patient care concerns or were motivated by racial animus. Further, those peer review actions could be tainted by the same racial animus that Dr. Ennix alleges marred the challenged peer review process, further marring any potential probative value or credibility. Similarly, cases or peer review activities at other hospitals was not considered by ABSMC in this peer review, and has no probative value regarding the motivation of or justification for ABSMC's actions. On that basis, all such evidence should be excluded.

Finally, even if peer review documents and evidence post-dating the challenged peer review or originating from other institutions had any probative value in this case, such minimal value would be outweighed by its potential for unfair prejudice and confusion of the jury, which might mistakenly believe that ABSMC had considered such evidence in the course of its peer review. Further, presentation of this extraneous evidence would unnecessarily waste time and delay conclusion of this case. For these additional reasons, this Court should exclude such evidence.

## **CONCLUSION**

For the foregoing reasons, Dr. Ennix respectfully requests that the Court exclude all argument or evidence relating to all cases or peer review activities unrelated to the peer review of the ten cases at issue in this lawsuit.

## DECLARATION OF RACHEL J. SATER

- I, Rachel J. Sater, declare:
- 1. I am an attorney licensed to practice law in the State of California and in this Court. I am an attorney at Moscone, Emblidge & Quadra, LLP, counsel of record for the Plaintiff.
- 2. Attached hereto as Exhibit A is a true and correct copy of relevant portions of ABSMC's initial disclosures in this case.
- 3. Attached hereto as Exhibit B are true and correct copies of four Subpoenas in a Civil Case served by ABSMC in this case.
- 4. As alleged in Paragraph 5 of the Complaint, during the time period relevant to this suit, Dr. Ennix held surgical privileges only at Summit Campus and Doctors Hospital San Pablo.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Dated: April 29, 2008 /s/
Rachel J. Sater

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10 11	Attorneys for Defendant ALTA BATES SUMMIT MEDICAL CENTER					
12	UNITED STATES DISTRICT COURT					
13	NORTHERN DISTRICT					
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15	COYNESS L. ENNIX, JR., M.D.,	CASE NO. C 07-2486 WHA				
16 17	Plaintiff,	DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE				
18		NO. 1 TO EXCLUDE UNRELATED PEER REVIEW EVIDENCE				
19	V.	<b>DATE</b> : May 19, 2008				
20	ALTA BATES SUMMIT MEDICAL CENTER.	TIME: 2:00 p.m.  DEPT: Ctrm. 9, 19th Floor  JUDGE: Hon. William H. Alsup				
21	Defendant.					
22	Bolondant.	COMPLAINT FILED: May 9, 2007 TRIAL DATE: June 2, 2008				
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1	Except for impeachment purposes, Defendant does not oppose the				
2	exclusion of (1) evidence of ongoing peer review at ABSMC (i.e., adverse peer review				
3	actions taken after July 11, 2006); and (2) of evidence regarding Dr. Ennix's poor				
4	performance record at other medical institutions.				
5	DATED:	May 9, 2008	KAUFF MCCLAIN & MCGUIRE LLP		
6					
7	3 3 1.		By:		
8			ALEX HERNAEZ		
9			Attorneys for Defendant ALTA BATES SUMMIT MEDICAL		
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